

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

Petitioner,

v.

SACRAMENTO CITY UNIFIED
SCHOOL DISTRICT

Respondent.

OAH CASE NO. N2006050231

**ORDER AS TO PETITIONER'S
MOTION TO STAY PUT**

On May 8, 2006, the Office of Administrative Hearings (OAH) received from attorney F. Richard Ruderman a Request for Due Process Hearing (Complaint) on behalf of Student, naming Sacramento City Unified School District (District) as the Respondent. Petitioner's Complaint regards whether Student is eligible for special education services.

On August 7, 2006, Petitioner filed a Stay Put request regarding the District's involuntary transfer of Student to another high school based on Student's habitually disruptive conduct. OAH issued a Notice of Motion on August 8, 2006, which gave the District five business days to file a response to Petitioner's Stay Put request. On August 14, 2006, OAH received a response from attorney Emily E. Ross on behalf of the District. The District contends that Student is not entitled to Stay Put protection because the District determined on June 23, 2006, at an Individualized Education Program (IEP) meeting that Student is not eligible to receive special education services.

APPLICABLE LAW

Title 20 United States Code section 1415(j)¹ provides: "Except as provided in subsection (k)(4) [concerning student disciplinary proceedings], during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of the child, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed."

¹ All statutory citations are to Title 20 United States Code, unless otherwise noted.

34 Code of Federal Regulations part 300.514 (1999) provides: “(a) Except as provided in . . . [the regulation concerning student disciplinary proceedings], during the pendency of any administrative or judicial proceeding regarding . . . [a request for a due process hearing], unless the State or local agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her current educational placement. [¶] (b) If the complaint involves an application for initial admission to public school, the child, with the consent of the parents, must be placed in the public school until the completion of all the proceedings.”

Education Code section 56505(d), provides: “. . . [D]uring the pendency of the hearing proceedings, including the actual state-level hearing, or judicial proceeding regarding a due process hearing, the pupil shall remain in his or her present placement, except as provided in . . . [the federal regulation concerning student disciplinary proceedings], unless the public agency and the parent or guardian agree otherwise. A pupil applying for initial admission to a public school shall, with the consent of his or her parent or guardian, be placed in the public school program until all proceedings have been completed. . .”

For children not yet eligible for special education and related services, Section 1415(k)(5)(A) provides:

A child who has not been determined to be eligible for special education and related services under this part [20 U.S.C. §§ 1411, et seq.] and who has engaged in behavior that violates a code of student conduct, may assert any of the protections provided for in this part [20 U.S.C. §§ 1411, et seq.] if the local educational agency had knowledge (as determined in accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.

A student not yet eligible for special education services is not entitled to Stay Put protection under specified circumstances, pursuant to Section 1415(k)(5)(C), which provides:

A local educational agency shall not be deemed to have knowledge that the child is a child with a disability if the parent of the child has not allowed an evaluation of the child pursuant to section 614 [20 U.S.C. § 1414] or has refused services under this part [20 U.S.C. §§ 1411, et seq.] or the child has been evaluated and it was determined that the child was not a child with a disability under this part [20 U.S.C. §§ 1411, et seq.].

DISCUSSION

The stay put provision of the IDEA has been interpreted to function as an automatic statutory injunction against changing a child’s then-existing “educational placement” or “present placement,” pending the resolution of a dispute between the school district and the parents regarding the child’s educational program. (*Casey K. v. St. Anne Community High*

School District No. 302 (7th Cir. 1998) 400 F.3d 508, 511.) The federal act and its regulations do not provide a definition for “educational placement.” For purposes of stay put, a student’s “current educational placement” is typically the placement called for by the student’s IEP that has been implemented prior to the due process hearing request. (*Thomas v. Cincinnati Board of Education* (6th Cir. 1990) 918 F.2d 618, 625.)

In this case, the District exited Student from special education services during the 2001-2002 school year, and Student has attended regular education classes since then. After Petitioner filed this action, the parties reached an interim agreement. As part of the interim agreement, the District agreed to assess Student and to convene an IEP meeting regarding Student’s eligibility to receive special education services. The parties met on June 23, 2006, and the District determined that Student was not eligible to receive special education services. On June 29, 2006, the District unilaterally transferred Student from Kennedy High School, a regular high school, to American Legion High School, a continuation school, for disciplinary reasons. Because the District evaluated Student and determined Student not to be eligible for special education services before deciding to unilaterally transfer Student for disciplinary reasons, Student is not entitled to Stay Put.

ORDER

Petitioner’s Motion for Stay Put is denied.

Dated: August 23, 2006

PETER PAUL CASTILLO
Administrative Law Judge
Special Education Division
Office of Administrative Hearings